

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #12	CCRB Case #: 202003706	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 9:00 PM	Location of Incident: Classon Avenue between Gates Avenue and Quincy Street	Precinct: 79	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/30/2020 12:56 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/30/2020 12:56 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Craig Mcgrath	26900	955165	MAN CT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Eric Delman	00000	922228	077 PCT
2. POM Patrick Craig	26996	945623	077 PCT
3. DT3 Kristo Cevi	1537	952569	BK SVS
4. POM Luis Melendez	17507	958921	078 PCT
5. POM Justin Constantino	03864	964454	078 PCT
6. POM Justin Grieco	04991	944613	075 PCT
7. SGT Vincent Tiernan	05478	935846	075 PCT
8. POF Diana Grillo	21145	958655	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Craig Mcgrath	Force: Police Officer Craig Mcgrath struck an individual with a vehicle.	[REDACTED]

Case Summary

On May 30, 2020, § 87(2)(b) filed this complaint via the online website on behalf of an unidentified victim. § 87(2)(b) did not witness this incident and filed the complaint as a result of viewing video footage on social media.

On May 29, 2020, at approximately 9:00 p.m., in the vicinity of Classon Avenue between Gates Avenue and Quincy Street in Brooklyn, a police brutality protest was underway. PO Craig McGrath, PO Patrick Craig, and Lt. Eric Delman, all then of the 77th Precinct, occupied an unmarked vehicle traveling in the area and towards the 88th Precinct stationhouse. While the vehicle was driving past the protesters, PO McGrath opened the vehicle door adjacent to his seat, causing the door to strike the unidentified victim (**Allegation A -Force: Vehicle,** § 87(2)(g)). The unidentified victim was not arrested by PO McGrath as a result of this incident, and due to the victim being unidentified, the investigation was unable to determine whether he was arrested in connection with the protest.

Material video footage obtained in this case was recorded by an unidentified individual and uploaded to Twitter (Board Review 01) and summarized (Board Review 02). No Body-Worn Camera (BWC) footage related to this complaint was received.

Findings and Recommendations

Allegation (A) Force: Police Officer Craig McGrath struck § 87(2)(b) with a vehicle.

§ 87(2)(b) filed this complaint as a reporting non-witness and directed the CCRB to a portion of video footage he had seen on social media.

§ 87(2)(b) a member of the press and witness to this incident, stated that he did not record footage of the incident, was not familiar with the victim in this complaint, and refused to provide a sworn statement to the CCRB. After the incident, § 87(2)(b) uploaded footage of the incident that he had viewed to a social media account.

The investigation attempted to identify the victim in this case via a review of video evidence, questions posed to interviewed officers and a civilian witness, searches of the CCRB's Complaint Tracking System for complaints naming the victim in similar complaint, and an extensive review of documents provided by the NYPD in response to a Reznick request after the conclusion of IAB's investigation. However, these efforts were unsuccessful. As such, no sworn civilian statements related to this incident were obtained.

Video footage (Board Review 01), eight seconds in length, recorded by an unidentified individual, and which § 87(2)(b) uploaded to his Twitter page was obtained by the CCRB. This footage depicts a marked vehicle moving from the left to right of the frame, during which time numerous individuals in plainclothes can be seen standing on the sidewalks and in the roadway. As the vehicle moves, sirens and voices can be heard. After this vehicle exits the frame, the camera pans to the left, where an unmarked, silver sedan with flashing red lights in its front grill and front windshield enters the left of the frame. The unidentified victim in this complaint, wearing a short-sleeved, dark-colored shirt, dark-colored pants, face covering, and dark-colored backpack, stands on the passenger side of the vehicle, seemingly immediately next to it. The vehicle's front passenger door opens, and the unidentified victim outstretches the left arm towards the door. An abrupt sound can be heard, and the unidentified victim's body turns to the right towards the vehicle as it moves away. The vehicle appears to remain in motion through the entirety of this portion of the footage, which concludes with the vehicle moving to the right of the frame and the unidentified

victim standing next to another plainclothes individual in the roadway.

PO McGrath stated to the CCRB (Board Review 03) that at approximately 9:00 p.m. on May 29, 2020, he occupied the front passenger seat of an unmarked, silver Ford Taurus driven by one of his partners, PO Craig, and occupied in a rear seat by his other partner, Lt. Delman. The officers drove northbound on Classon Avenue in Brooklyn towards the 88th Precinct stationhouse, where officers had requested assistance and communicated in “frantic” radio transmissions that the stationhouse was being “overtaken.” On Classon Avenue and in the vicinity of Monroe Avenue, vehicle traffic conditions became poor, so PO Craig parked the officers’ vehicle. PO McGrath exited the vehicle with the intent of moving northwards, to the 88th Precinct stationhouse, on foot. From the officers’ north, civilians threw “airmail,” which PO McGrath described as projectiles, including glass bottles, southwards towards himself and other officers. This was the first time PO McGrath experienced objects being thrown towards him on the date of this incident. No objects struck PO McGrath, his vehicle, or other officers. PO McGrath thought that moving on foot to the 88th Precinct stationhouse consisted of a distance too long to safely travel. After approximately one minute, PO McGrath and his partners returned to and entered their vehicle. PO McGrath thought that being far from the stationhouse and already experiencing thrown objects meant that he was entering a “violent situation.”

PO McGrath further testified that as the officers traveled again, objects were thrown towards and struck their vehicle. A crowd of over thirty civilians was outside PO McGrath’s vehicle door window on the sidewalk and in the roadway to the vehicle’s right, and additional civilians, the number of whom PO McGrath could not approximate, were in the roadway and to the vehicle’s left. A marked NYPD SUV was in front of PO McGrath’s vehicle. While moving, the distance between these two vehicles varied. PO McGrath’s vehicle stopped, and he learned that a vehicle somewhere in front of his had a mattress placed on it, causing vehicular traffic to stop. PO McGrath did not know what vehicle or officers were involved in this. After the mattress had been “cleared” from this vehicle, traffic moved. While traveling at what PO McGrath described as “an extremely slow speed,” PO McGrath saw that someone threw a brick towards the front passenger door of his vehicle, where he was seated. The brick struck the door, damaging it in a manner photographed by the NYPD (Board Review 11). PO McGrath looked out of the front passenger door window. The individual who threw the brick ran southwards. PO McGrath said, “I’m gonna get that guy.” No officer responded to this. Vehicular traffic cleared in a “slingshot effect” of vehicles in front of PO McGrath’s vehicle moving, in sequence, and creating space between vehicles.

While still looking out of the front passenger door window and behind him, PO McGrath opened his vehicle door, intending to attempt to exit the vehicle and apprehend the individual who had thrown the brick. When PO McGrath opened the door, he thought that his vehicle was moving at a speed at which he could safely exit the vehicle. Because he made eye contact with the individual who threw the brick, because his vehicle moved at a slow speed, and for no other reason, PO McGrath thought that it was safe for him to open his vehicle door. Approximately thirty protestors were outside of PO McGrath’s vehicle door, and he did not gain enough clearance from opening his door to move his foot outside the vehicle or “change [his] perspective.” PO McGrath did not factor the protestors’ presence into his decision to open the door. PO McGrath’s thought process did not involve considering that, after previously encountering civilians in the roadway and on the sidewalk on various occasions, opening his vehicle door in these circumstances might result in the door striking a civilian.

At the same time PO McGrath opened his door, PO Craig accelerated the vehicle in what PO McGrath thought was an abrupt speed change, increasing the vehicle’s speed. PO McGrath heard something strike his vehicle door and thought, due to the sound of the contact being the same as

previous sounds, that it was the result of additional objects being thrown at his vehicle. Because PO Craig accelerated the vehicle, PO McGrath closed his vehicle door. After the incident, another officer presented PO McGrath with video footage of this incident; at that time, PO McGrath first became aware that the sound noted above was that of his vehicle door striking the unidentified victim in this case, whom PO McGrath did not describe to the CCRB as a subject of his attempt at an enforcement action.

PO Craig stated to the CCRB (Board Review 04) that after officers removed the mattress from the marked vehicle in front of his vehicle, PO McGrath said, “Hey, I’m gonna go grab that guy. He just threw something at the car.” PO Craig did not know to whom PO McGrath referred. PO Craig heard PO McGrath open his vehicle door for approximately half of one second. PO Craig, who thought the area to be unsafe and did not know why PO McGrath had targeted one of numerous individuals throwing objects, said something to the effect of, “Are you crazy? We’re just gonna go to the 88. Close the door.” PO Craig did not otherwise respond to PO McGrath.

Lt. Delman stated to the CCRB (Board Review 05) that he first became aware of this incident and of PO McGrath having opened his vehicle door when, upon being presented the above video footage of the incident by other officers, viewing the footage. Lt. Delman thought that the video footage depicted the vehicle he and his partners had occupied during this incident. Lt. Delman did not instruct PO McGrath to take the action of his opening his vehicle door, nor did PO Craig. Nothing during the incident suggested to him that PO McGrath had taken the action of opening the door of his moving vehicle with civilians present in the area. Nothing PO McGrath said during the incident suggested to Lt. Delman a reason he might have taken such an action. Lt. Delman did not instruct PO McGrath to take such an action, and Lt. Delman did not recall hearing PO Craig instruct PO McGrath to do so. PO McGrath did not speak with Lt. Delman, at any point, about having taken such an action, including on the incident date or after Lt. Delman viewed the footage.

§ 87(2)(g)

When in the course of pursuing a vehicle, an officer is generally prohibited from ramming a vehicle or placing a Department vehicle in a position to be struck by the pursued vehicle. Such a pursuit is to be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if the suspect is not immediately apprehended. NYPD Patrol Guide, Procedure 221-15 (Board Review 06).

An officer is to use no more than the reasonable force necessary to gain control or custody of a subject. NYPD Patrol Guide, Procedure 221-01 (Board Review 07).

Members of the NYPD pledge to protect the lives and property of their fellow citizens and impartially enforce the law. NYPD Patrol Guide, Procedure 200-02 (Board Review 12).

Although the Patrol Guide does not enumerate provisions for use of a moving vehicle, it details the calculation necessary for weighing risk of officer and public harm against risk of continued danger to the community during a vehicle pursuit. In light of this, in the analogous scenario of occupying a vehicle moving to accomplish an enforcement goal, the same standard of reasonableness can be applied to use of vehicle force if such force is, intentional or inadvertent, the result of a

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

- § 87(2)(b) has been party to five CCRB complaints and has been named as a victim in no allegations (Board Review 08).
- PO McGrath has been a member of service for seven years and has been a subject in 14 CCRB complaints and 49 allegations, none of which were substantiated. § 87(2)(g)

- This complaint was not suitable for mediation.
- As of March 23, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 09).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of conviction in New York City (Board Review 10).

Squad No.: 12

Investigator: Chris Anderson SI Chris Anderson 03/30/2021
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson March 31, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date